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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/002,584

01/05/1998

THEODORE D. WUGOFSKI

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02/25/2005

GATEWAY, INC.

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EXAMINER

BROWN, RUEBEN M

ART UNIT

PAPER NUMBER

2611

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/002,584

Applicant(s) **JK**

WUGOFSKI, THEODORE D.

Examiner

Reuben M. Brown

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,9-13,15-19,21-23,28-36 and 44-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-13,15-19,21-23,28-36 and 44-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/7/2004 has been entered.

Response to Arguments

2. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Examiner points out that the claimed 'user' in the instant claims is broad enough to read on an operator at a CATV headend or server choosing or determining the scheduling the time and channel of a transmission of EPG data. It is also noted that 'EPG data' is broader than an EPG, since EPG 'data' reads on any portion of an EPG, such as the title, broadcast time and channel, etc. of a movie, whereas the EPG is the overall guide

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itself. This distinction is pointed out since the claim is still broad enough to read on a user requesting to receive a movie for scheduled downloading and storage, such that the transmitted movie includes its title, station name or number, and/or broadcast times, etc., or some other EPG data, wherein the EPG data may be transmitted as associated data, for instance.

As for the claimed scheduled time, it is pointed out that the 'scheduled time' is broad enough to read on the user scheduling to receive the EPG data 'right now' or immediately upon demand. "Scheduled time" is not limited to a broadcast time in the future.

Regarding the newly amended feature of 'determining whether the tuning circuitry has been powered-on and if not, powering on the tuning circuitry', Ohga teaches that, "After turning on the TV receiver³ (or immediately after reaching the start time if the TV receiver was already on)". The above passage reads on the claimed subject matter, since the system detects whether or not the TV was turned on, before attempting a turn-on.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1-6, 9-13, 15-19, 21-23, 25, 28-32, 35, 36, 39 & 45-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schultheiss, (U.S. Pat # 6,208,384), in view of Schein, (U.S. Pat # 6,247,176), Ohga, (U.S. Pat # 5,465,385) and Marsh, (U.S. Pat # 6,208,799).

Considering claim 1, the amended claimed computerized method for scheduled caching of in-band data in a channel comprising a real-time scheduling process; and a subscriber initiated scheduling process for determining a scheduled time and channel for in-band data is met by the combination of Schultheiss and Schein.

As for the amended claimed real-time scheduling process and user initiated process operable to provide an interface for the user request EPG data, Schultheiss teaches that a subscriber may receive EPG data using a TV listing and schedule downloading software, which reads on the claimed used interface, col. 8, lines 45-60. Therefore the subscriber in Schultheiss is enabled to request transmission of EPG data for various channels and programs. The discussion in Schultheiss of the user designating whether cable, over the air or satellite, reads on the 'determining the channel'. However, Schultheiss does not disclose that the user interface further enables the user to invoke the real-time scheduling process to schedule execution of a caching process.

Nevertheless, Schein discloses an algorithm for a subscriber to schedule the delivery of in-band data, (col. 6, lines 21-40). Schein teaches a system wherein a subscriber requests

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in-band data, such that the requested data is transmitted over a TV network. The subscriber is provided with a schedule of time and channels to make a selection for the in-band data.

It would have been obvious for one of ordinary skill in the art at the time the invention was made, to operate Schultheiss in a manner wherein the user is provided with transmission schedule information, at least in order to be made aware of when the in-band data transmission will take place, as taught by Schein.

As for the additional recitation that the in-band data is EPG data, Schein does not explicitly teach such a limitation. Nevertheless, this feature is met by the disclosure of Schultheiss, col. 8, lines 48-60.

Further amended claim 1, includes the limitation of wherein the caching process is operable for instructing the tuner circuitry to tune to the scheduled channel for receiving the EPG data. This recitation is met by the combination of Schultheiss, which teaches receiving EPG data and Schein, which discloses that the scheduling data is used by the user's system to automatically tune into the proper channel at the appropriate time, in order to receive the data requested by the subscriber, (col. 6, lines 21-65).

Regarding the additional limitation of the scheduling process for "powering on the tuning circuitry", Schultheiss and Schein do not teach such a feature. Nevertheless, at the time

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the invention was made, it was very well known in the art to power-on a tuner circuitry in order to receive a requested transmission of data. In particular, Ohga, (col. 5, lines 5-10) teaches that when a present time clock corresponds with the start time of a user desired broadcast, at that instant the 'CPU 25 automatically turns on the power of the TV receiver 3', which reads on the claimed "process... operable for powering on a tuner circuitry". It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify the combination of Schultheiss and Schein with the well known technique of automatic power-on of a tuner, as taught by Ohga in order for the subscriber to receive requested programming at the appropriate time, at least for the desirable improvement of obviating the need for the subscriber to remember the broadcast start times of desired programming and to be available to ensure that the tuner circuitry is powered-on at such times.

Regarding the newly amended feature of 'determining whether the tuning circuitry has been power-on and if not, powering on the tuning circuitry', Ohga teaches that, "After turning on the TV receiver3 (or immediately after reaching the start time if the TV receiver was already on)", col. 5, lines 8-11. The 'if' phrase, reads on 'determining'.

Regarding the claimed feature of determining if a conflict exists, the combination of Schultheiss and Schein does not provide such a teaching. Nevertheless, one of ordinary skill in the art would have been motivated to detect if there exists a scheduling conflict between scheduled reception of events, at least in order to provide an attempt at resolution of the conflict. To that end, Marsh discloses an invention wherein the scheduled recording time of events is at least periodically updated at a user's set top

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terminal, (col. 5, lines 55-65; col. 6, lines 30-46). The system of Marsh compares any updated schedule time with scheduled recording events that are logged in the system. If there is scheduling conflict of the time of recording of at least two events, the system warns the user in order to change the time of at least one of the events, (col. 8, lines 60-65; col. 10, lines 19-65). It would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify the combination of Schultheiss and Schein with the technique of detecting scheduling conflicts in recording events, at least for the desirable improvement of resolving such a conflict, as taught by Marsh.

As mentioned above, Ohga provides the teaching of an automatically powering-on tuner circuitry. Thus the combination of the above references with Marsh, provides for determining if there is exists a conflict in the scheduled power-on of circuitry, tuning to a scheduled channel at a scheduled time, i.e., the scheduled recording of a broadcast. If no scheduling conflict exists, then any particular un-conflicted event will be executed according to its schedule, whereas if an event has a conflict with at least one other event, then the user is notified in order to resolve the conflict.

Considering claim 2, the claimed feature of retrieving the scheduled time & and channel from a source reads on the combination of Schultheiss and Schein.

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Considering claims 3 & 5, the claimed feature is broad enough to read on EPG data transmitted over a conventional channel, which is necessarily included in Schultheiss.

Considering claims 4, 13, 17 & 23, in Schultheiss and Schein, the receiver necessarily extracts requested data from any other data.

Considering claim 6, Schultheiss teaches that the system is also applicable for satellite communication, col. 2, lines 1-2 & col. 6, lines 4-7.

Considering amended claim 9, the claimed method steps of a scheduling process that corresponds with the subject matter mentioned above in the rejection of claim 1 are likewise rejected. Regarding the amended claimed step for a determination to receive in-band data being initiated by the user, Schultheiss teaches that the user is enabled to choose to receive EPG data broadcasts (col. 8, lines 48-60). The additional claimed feature of storing in-band data on mass storage is met by Schultheiss & Schein, which teaches that the EPG data is cached at the user premise, col. 9, lines 44-48.

The further claimed feature of performing the scheduled function if no conflict exists, reads on the combination of Schultheiss, Schein & Marsh.

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Considering claims 10 & 18, as for the claimed step of displaying a plurality of schedules to a user for selection, the claimed feature reads on Fig. 3 of Schein. Also, Schultheiss teaches that the user may request delivery of EPG data or at least software, which reads on 'different content'.

Considering claims 11-12, 19 & 22, this feature reads on discussion in Schultheiss that the may determined if the EPG data is received from CATV, satellite or terrestrial sources.

Considering amended claim 15, claimed steps of a scheduling process that corresponds with subject matter mentioned above in the rejection of claim 9, are likewise rejected.

Regarding the additional limitation of storing the recited steps on a computer readable medium having computer executable-instructions stored thereon for performing the steps, Matthews and Schein are computing devices and therefore necessarily include such features.

The additional claimed feature of performing the scheduled functions if no conflict exists, reads on the combination of Schultheiss, Schein & Marsh.

Considering amended claim 16, the claimed elements of a digital processing system corresponds with subject matter mentioned above in the rejection of claim 1, and are likewise rejected. The additional claimed feature of performing the scheduled functions if no conflict exists, reads on the combination of Schultheiss, Schein & Marsh.

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Considering amended claim 21, the claimed elements of a computerized system for scheduled caching corresponds with subject matter mentioned above in the rejection of claim 1, and are likewise rejected. The additional claimed feature of performing the scheduled functions if no conflict exists, reads on the combination of Schultheiss, Schein & Marsh.

Considering amended claim 25, the claimed elements of an information handling system corresponds with subject matter mentioned above in the rejection of claim 1, and are likewise rejected. The additional claimed feature of performing the scheduled functions if no conflict exists, reads on the combination of Schultheiss, Schein & Marsh.

Considering claims 28, 35 & 39, both Schultheiss & Schein teach receiving Internet related data.

Considering claim 29, the instant features are met by the combination of Schultheiss & Schein.

Considering claim 30, in Schein, (col. 6, lines 54-56) the reference is silent as to method of transmission of the scheduling data, whereas in Ohga (col. 1, lines 45-50 & col. 4, lines 11-15) the scheduling information is transmitted over a CATV channel.

Considering claim 31, the caching process powering on the tuner reads on the combination of Schultheiss, Schein & Ohga, as discussed above with respect to claim 1.

Considering amended claim 32, the claimed performance of steps comprised on a computer readable medium corresponds with subject matter mentioned above in the rejection of claim 9, and are likewise rejected.

Considering amended claim 36, the claimed method for handling information comprising steps that correspond with subject matter mentioned above in the rejection of claim 1, and are likewise rejected. The additional claimed feature of performing the scheduled functions if no conflict exists, reads on the combination of Schultheiss, Schein & Marsh.

Considering claim 44, Schultheiss teaches that the subscriber may designate whether to receive the EPG from CATV, over-the-air and/or satellite providers, which reads on multiple sources, col. 8, lines 43-60.

Considering new claim 45, the claimed feature of executing multiple executions of the caching process is broad enough to read on Schultheiss & Schein, since the user is enabled to choose and execute multiple broadcast programs.

Considering claims 46-51 Schein teaches requesting information from the Internet, col. 6, lines 42-46. Thus it would have been obvious to provide the subscriber with stock quotes. As for claims 47, 49 & 51, it would have been obvious for one of ordinary skill in the art at the time the invention was made, to modify the combination of Schultheiss & Schein to offer the subscriber

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with any additional types of data, at least for the benefit of providing the subscriber with a wider range of information.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A) Daniels Teaches an automated recording method.

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Any response to this action should be mailed to:

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(703) 872-9306, (for formal communications intended for entry)

Or:

(703) 746-6861 (for informal or draft communications, please label
"PROPOSED" or "DRAFT")


*Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,
Arlington, VA., Sixth Floor (Receptionist).*

Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Reuben M. Brown whose telephone number is (703) 305-2399.
The examiner can normally be reached on M-F (8:30-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Christopher Grant can be reached on (703)730-4755. The fax phone numbers for the
organization where this application or proceeding is assigned is (703) 872-9306 for regular
communications and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding
should be directed to the receptionist whose telephone number is (703)305-4700.

Reuben M. Brown


REUBEN M. BROWN
PATENT EXAMINER